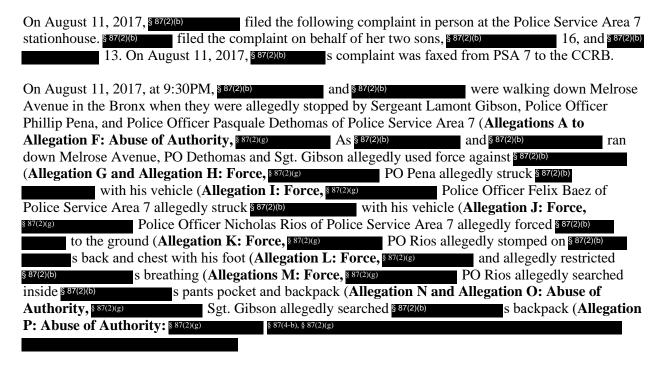
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	,		CCRB Case #:		Force	☐ Discourt.	U.S.
Sara Griffin		APU	201706642	1	Abuse	☐ O.L.	☐ Injury
Said Offini	[. H O	201700042		House		V Injury
Incident Date(s)		Location of Incident:]]	Precinct:	18 Mo. SOL	EO SOL
Friday, 08/11/2017 9:30 PM		East 165th Street and l	Melrose Avenue		42	2/11/2019	2/11/2019
Date/Time CV Reported	(CV Reported At:	How CV Reported	1:	Date/Time	Received at CC	RB
Fri, 08/11/2017 10:35 PM]	Precinct	In-person		Fri, 08/11	/2017 11:12 PM	
Complainant/Victim	Type	Home Addr	ess				
Subject Officer(s)	Shield	TaxID	Command				
1. SGT Lamont Gibson	05355	944594	PSA 7				
2. POM Phillip Pena	11192	956156	PSA 7				
3. POM Pasquale Dethomas	11005	955873	PSA 7				
4. POM Nicholas Rios	06583	955377	PSA 7				
5. POM Felix Baez	04759	953654	PSA 7				
Witness Officer(s)	Shield No	Tax No	Cmd Name				
1. SGT Joseph Walsh	1188	942685	PSA 7				
Officer(s)	Allegation	1			Inve	estigator Recor	nmendation
A.SGT Lamont Gibson	Abuse: Se	rgeant Lamont Gibsor	n stopped § 87(2)(b)				
B.SGT Lamont Gibson	Abuse: Se	rgeant Lamont Gibsor	stopped (5) (5)				
C.POM Phillip Pena	Abuse: Po	lice Officer Phillip Pe	ena stopped § 87(2)(b)				
D.POM Phillip Pena	Abuse: Po	lice Officer Phillip Pe	na stopped § 87(2)				
E.POM Pasquale Dethomas	Abuse: Po	lice Officer Pasquale	Dethomas stopped §	87(2)(l	0)		
F.POM Pasquale Dethomas	Abuse: Po	lice Officer Pasquale	Dethomas stopped	87(2)			
G.POM Pasquale Dethomas	Force: Polagainst § 87	ice Officer Pasquale I	Dethomas used phys	ical	force		
H.SGT Lamont Gibson	Force: Ser § 87(2)(b)	geant Lamont Gibson	used physical force	agai	inst		
I.POM Phillip Pena	Force: Pol with a veh	ice Officer Phillip Per icle.	na struck ^{§ 87(2)(b)}				
J.POM Felix Baez	Force: Pol with a veh	ice Officer Felix Baez icle.	z struck ^{§ 87(2)(b)}				
K.POM Nicholas Rios	Force: Pol against § 87	ice Officer Nicholas F	Rios used physical fo	orce			
L.POM Nicholas Rios	Force: Pol against § 87	ice Officer Nicholas F	Rios used physical fo	orce			

Officer(s)	Allegation	Investigator Recommendation
M.POM Nicholas Rios	Force: Police Officer Nicholas Rios restricted § 87(2)(b) s breathing.	
N.POM Nicholas Rios	Abuse: Police Officer Nicholas Rios searched §87(2)(b)	
O.POM Nicholas Rios	Abuse: Police Officer Nicholas Rios searched § 87(2)(b) s backpack.	
P.SGT Lamont Gibson	Abuse: Sergeant Lamont Gibson searched § 87(2)(b) s backpack.	
\$ 87(2)(g), \$ 87(4-b)		

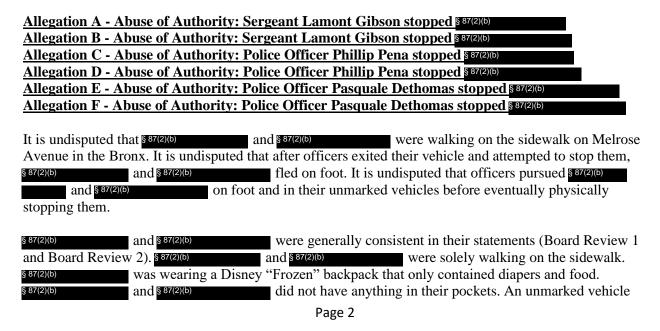
Case Summary

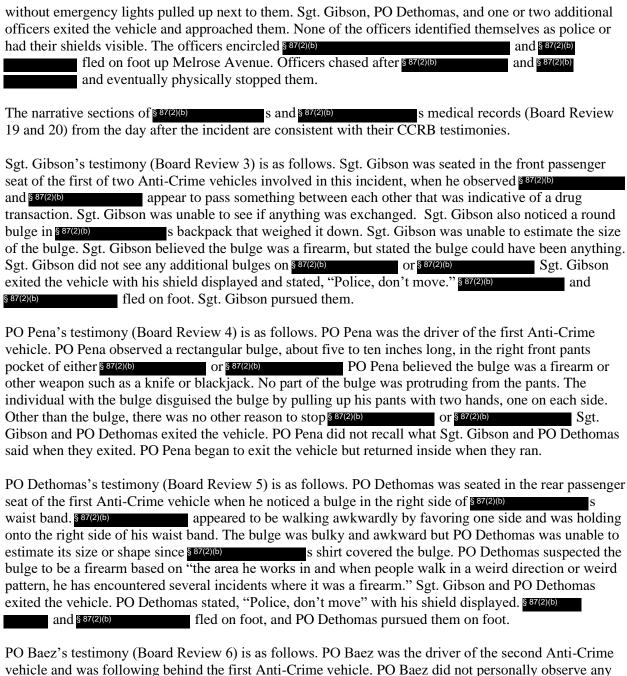


No one was arrested or summonsed as a result of this incident.

There is no video evidence is this case.

Findings and Recommendations





bulge. PO Rios (Board Review 7), who was with PO Baez, testified that he did not observe any bulge.

Stop Reports were completed by both PO Pena and PO Dethomas. PO Dethomas's Stop Report (Board Review 8) narrative states, "At T/P/O defendant was stopped during approach to unrelated male, defendant grabbed his waist band adjusting what seemed to be a heavy object and began running, then fell a short distance after the initial stop." The pedigree information listed for the person stopped matches that

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PO Pena's Stop Report (Board Review 9) narrative states, "While I was approaching a separate, unrelated male, subject did grab his book bag, then displayed a bulge and fled into oncoming trafficI reasonably suspected that the male was in possession of a firearm." The pedigree information listed for the person stopped matches that of \$87(2)(0)
No weapon or contraband was ultimately recovered.

A person is considered stopped if a reasonable person in the same situation would believe that the officers' conduct was a significant limitation of their freedom. <u>People v. Hicks</u>, 68 N.Y.2d 234, 240 (1986) (Board Review 42).

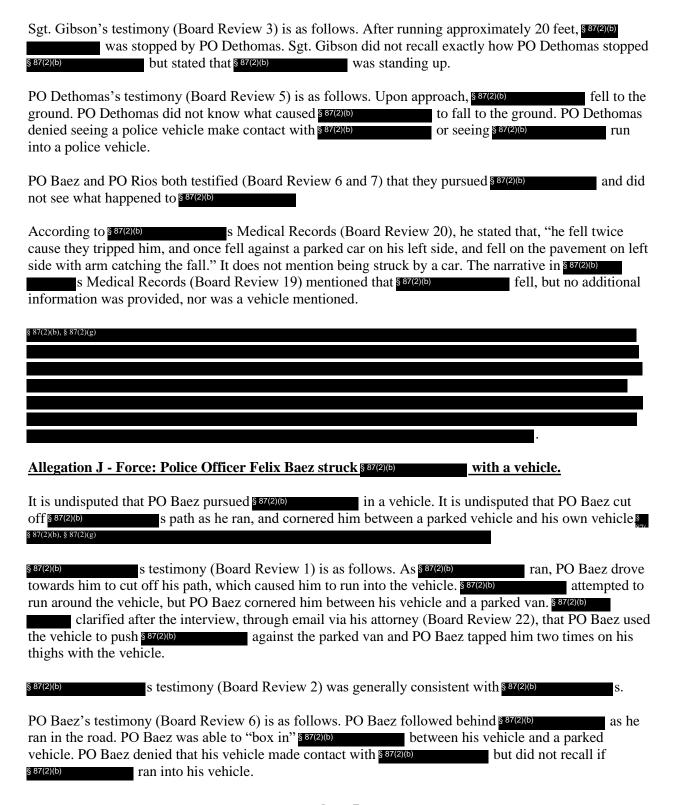
A stop may be conducted only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime. NYPD Patrol Guide, Procedure 212-11 (Board Review 10); People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 11). The observation of a mere bulge or heavy object in a pocket does not impel a reasonable conclusion that the defendant was armed. People. Williams, 79 A.D.2d 147 (1981) (Board Review 12). An unidentified bulge in a defendant's pocket and the defendant's flight does not justify a stop. People v. Holmes, 81 N.Y.2d 1056 (1993) (Board Review 13). An officer must observe actual narcotics or currency exchanged in order to have reasonable suspicion that a hand-to-hand transaction occurred, even when an officer has training to identify drug transactions and the observation occurs at a location known for such transactions. People v. Loper 115, A.D.3d 875 (2014) (Board Review 14).

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)
Allegation G - Force: Police Officer Pasquale Dethomas used physical force against 887(2)(5)
Allegation H - Force: Sergeant Lamont Gibson used physical force against 887(2)(b)
It is undisputed that \$87(2)(b) and \$87(2)(b) fled on foot once the officers exited the vehicle. \$87(2)(b), \$87(2)(g)
s testimony (Board Review 2) is as follows. PO Dethomas caught up with \$87(2)(b) while he ran and dropped his shoulder and rammed it into \$87(2)(b) s left
shoulder. \$87(2)(b) fell to the ground. \$87(2)(b) got up and continued to run. Sgt. Gibson, who was in front of \$87(2)(b) stuck his foot out and tripped him, which caused \$87(2)(b)
to fall to the ground. §87(2)(b) scraped his arm and knee when he fell to the ground. The narrative section of §87(2)(b) s medical records (Board Review 20) is consistent
with his CCRB testimony.
testified (Board Review 1) that he was running ahead of \$87(2)(5) but that
he twice turned around and saw \$87(2)(b) getting up from the ground. \$87(2)(b) did not see what caused \$87(2)(b) to fall. The narrative section of \$87(2)(b) s medical records
(Board Review 19) is consistent with his CCRB testimony.
PO Dethomas's testimony (Board Review 5) is as follows. §87(2)(b) fell to the ground before any officer made contact with him. PO Dethomas did not know what caused §87(2)(b) to fall.
PO Dethomas denied using any force to bring \$87(2)(b) to the ground. PO Dethomas denied

seeing Sgt. Gibson use any force against \$87(2)(b) PO Dethomas's Stop Report (Board Review 8) narrative is consistent with his testimony that \$87(2)(b) fell upon approach.
Sgt. Gibson's testimony (Board Review 3) is as follows. PO Dethomas was able to stop \$87(2)(6) but Sgt. Gibson was unable to recall exactly how. \$87(2)(6) was standing up when he was stopped by PO Dethomas. Sgt. Gibson did not observe PO Dethomas use any force to stop \$87(2)(6) Sgt. Gibson denied tripping or using any physical force against \$87(2)(6)
8 87(2)(g) Were inside their vehicle pursuing \$87(2)(b) and were not observing \$87(2)(b)
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PO Rios's testimony (Board Review 7) is as follows. PO Rios pursued \$87(2)(b) on foot. PO Rios did not see any officer trip or make physical contact with \$87(2)(b)
A Threat, Injury, and Resistance Report (T.R.I.) was completed by Sgt. Gibson in regards to the alleged force against \$87(2)(b) (Board Review 15). The "Reporting MOS" was PO Rios. "Pushed subject" was listed as the actions taken by MOS. PO Rios claimed the T.R.I was not accurate.
The CCRB complaint, taken by Sergeant Jamie Walsh, on the same night as the incident, indicates that there were minor abrasions to \$87(2)(b) s elbow (Board Review 17). Swelling and abrasions to the left elbow and right knee were also noted in \$87(2)(b) s medical records (Board Review 20).
§ 87(2)(b), § 87(2)(g)
Allegation I - Force: Police Officer Phillip Pena struck 587(2)(b) with a vehicle.
It is undisputed that PO Pena pursued \$87(2)(b) and \$87(2)(b) by vehicle.\$87(2)(b).\$87(2)(g)
s testimony (Board Review 2) is as follows. \$87(2)(b) was running through
an intersection when an unmarked vehicle's front headlights struck him in the left rib cage, forcing him to the ground. He was unable to estimate how fast the vehicle was traveling when it struck him.
did not testify that he witnessed a vehicle strike \$87(2)(b) (Board Review 1).
PO Pena's testimony (Board Review 4) is as follows. PO Pena drove behind the second Anti-Crime vehicle as it pursued one of the fleeing suspects. PO Pena denied his vehicle made contact with the individual he was pursuing.



PO Rios's testimony (Board Review 7) is as follows. PO Baez's moving vehicle cut off \$87(2)(b) as he was running. It appeared \$87(2)(b) ran into PO Baez's vehicle, with \$87(2)(b) s lower body making contact with the vehicle. PO Rios was unable to estimate how fast PO Baez's vehicle was traveling, but \$87(2)(b) appeared to stumble in response to running into the vehicle. PO Rios did not recall if PO Baez boxed \$87(2)(b) between a parked vehicle, but denied seeing PO Baez strike \$87(2)(b) with the vehicle.
§ 87(2)(g) officer saw PO Baez strike § 87(2)(b) with the vehicle or § 87(2)(b) run into the vehicle.
According to Ser(2)(b) s Medical Records (Board Review 19), he alleged "they tapped him with the car twice, against his [right] leg." A small abrasion was noted on the right leg from allegedly being tapped by the vehicle.
§ 87(2)(b), § 87(2)(g)
Allegation K - Force: Police Officer Nicholas Rios used physical force against §87(2)(b)
After \$87(2)(b) was stopped, it is undisputed that he ended up on the ground. \$87(2)(b), \$87(2)(g)
s testimony (Board Review 1) is as follows. After being cornered by the police vehicle, PO Rios caught up with PO Rios asked PO Rios asked PO Rios asked PO Rios asked PO Rios stated, "Oh, it's the police," before he grabbed PO Rios stated, "Oh, it's the police," before he grabbed PO Rios stated, and slammed him down. The left side of PO Rios remained standing.
In the initial CCRB complaint filed the same night as the incident (Board Review 25), alleged he was "thrown to the floor." Medical Records (Board Review 19) only note that he fell between two cars.
did not testify that he witnessed PO Rios force \$87(2)(b) to the ground (Board Review 2), but the two were reportedly stopped more than a block apart.
PO Rios's testimony (Board Review 7) is as follows. Once PO Rios caught up with was attempting to run away. PO Rios stated, "Police, don't move." PO Rios attempted to grab 387(2)(5) and they both stumbled, and 387(2)(5) "wound up on the ground." PO Rios did not recall where exactly on 387(2)(5) s body he grabbed. PO Rios believed the momentum from running full speed, getting cut off by the vehicle, and running into the vehicle caused

PO Rios denied forcibly bringing \$87(2)(b) to the ground.
Sgt. Gibson's testimony (Board Review 3) is as follows. When Sgt. Gibson caught up to where was stopped, \$87(2)(b) was standing up. Sgt. Gibson denied seeing \$87(2)(b) or the ground. \$87(2)(b) informed Sgt. Gibson that he had been taken to the ground, but Sgt. Gibson did not learn any more details.
PO Pena's testimony (Board Review 4) is as follows. PO Pena exited his vehicle, and \$87(2)(6) was on the ground and lying on his side. PO Pena did not recall how \$97(2)(6) ended up on the ground. PO Pena did not recall seeing any officer force \$87(2)(6) to the ground.
PO Dethomas's testimony (Board Review 5) is as follows. After stopping \$87(2)(b) Dethomas and \$87(2)(b) walked approximately one block to where \$87(2)(b) was stopped by PO Rios and PO Baez. \$87(2)(b) was standing up. PO Dethomas did not know if force was used against \$87(2)(b)
PO Baez's testimony (Board Review 6) is as follows. After boxing in \$87(2)(b) between the vehicles, PO Baez exited his vehicle, and \$87(2)(b) was already on the ground. PO Rios had taken \$87(2)(b) to the ground, but PO Baez did not see how. PO Baez did not see \$87(2)(b) act in a manner which warranted being taken to the ground by PO Rios. PO Baez did not see \$87(2)(b) struggle with PO Rios and did not recall \$87(2)(b) being aggressive.
A Threat, Injury, and Resistance Report (T.R.I.) completed by Sgt. Gibson indicates that there was a forcible takedown of (Board Review 23). PO Rios was the reporting MOS. The T.R. I. was presented during Sgt. Gibson's and PO Rios's interviews (Board Review 7 and 3). Sgt. Gibson stated

As stated in <u>Patrol Guide Procedure 221-01</u> (Board Review 24), an officer's use of force must be reasonable under the circumstances. The reasonableness of the use of force by a police officer is determined by the following factors:

that he filled out the form after completing his investigation and did not recall what PO Rios told him regarding the force. PO Rios denied that he told Sgt. Gibson that he used force. The T.R.I. did not aid in

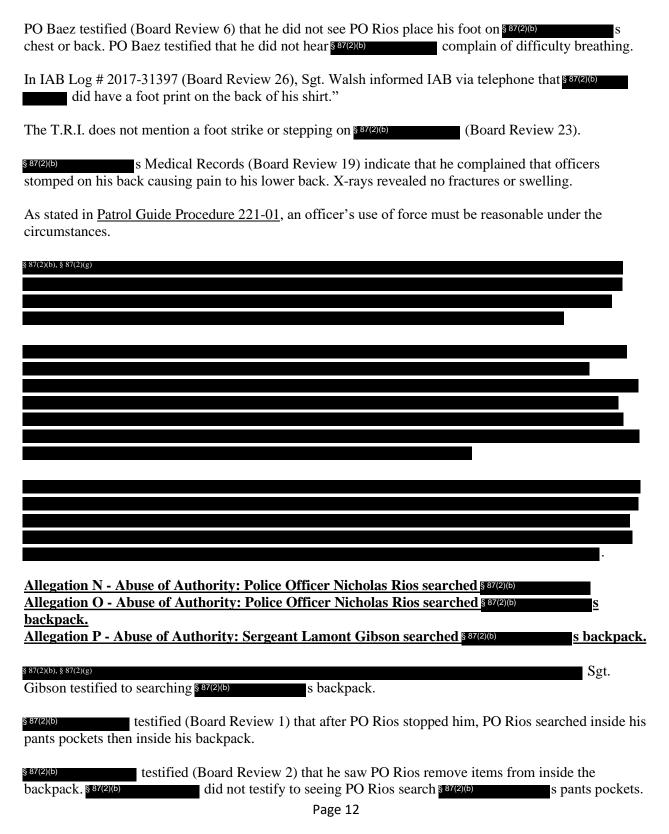
a. The nature and severity of the crime/circumstances

refreshing PO Rios's recollection about the incident.

- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators

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k. S	Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.
§ 87(2)(b), § 870	(2)(g)
§ 87(2)(b), § 87((2)(g)
	Page 10



PO Rios's testimony (Board Review 7) is as follows. PO Rios did not recall if he searched \$87(2)(6) stood up, PO Rios noticed a cylindrical bulge in the
backpack that looked like a baton. PO Rios frisked the backpack. PO Rios did not feel a hard shape that would be associated with a weapon. PO Rios did not remember if he ever opened the backpack.
Sgt. Gibson's testimony (Board Review 3) is as follows. Sgt. Gibson did not see any officer searching
s pants pockets. Sgt. Gibson acknowledged opening \$87(2)(6) s backpack to look for weapons. Prior to opening the backpack, \$87(2)(6) told Sgt. Gibson that there were diapers inside. Sgt. Gibson denied frisking the backpack before opening it. As Sgt. Gibson previously testified, he noticed a round bulge in the backpack that weighed it down but was unable to estimate the size of the bulge. Sgt. Gibson believed the bulge was a firearm, but stated the bulge could have been anything. Sgt. Gibson did not recall if any other officer looked inside the backpack.
PO Pena and PO Dethomas denied seeing any officer search \$87(2)(b) s pants pockets or backpack. PO Baez did not recall if any officer searched \$87(2)(b) s pants pockets and did not recall if the backpack was ever opened.
An officer must have probable cause to arrest in order to perform a search. <u>People v. DeBour</u> , 40 N.Y.2d 210 (1976) (Board Review 11). An officer who reasonably suspects that a detainee is armed may conduct a frisk or take other protective measures. <u>People v.Graham</u> , 134 A.D.3d 1047 (2015) (Board Review 27). A "weighted down" bag could contain any number of heavy articles and does not by its nature constitute a container indicative of contraband. <u>People v. Hampton</u> , 200 A.D.2d 466 (1994) (Board Review 28).
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(4-b), § 87(2)(g)

 (Board Review 31, 32, 33). Sgt. Gibson has been a member of the NYPD for 10 years, and is the subject of 11 prior CCF complaints involving 36 allegations. In case # 201005227, a frisk and question allegations we substantiated by the Board and Charges were recommended. The NYPD imposed the penalty Instructions. In case #201110762, a vehicle stop allegation was substantiated by the Board ar Charges were recommended. The NYPD chose not to prosecute. In case #201510005, a gun pointed and nightstick as club allegations were substantiated by the Board and Command Discipline B was recommended. The NYPD chose not to implement discipline. Sgt. Gibson one open CCRB complaint, #201708245, which is currently being investigated by Investigate Ralph of Squad 16. [STOPE] PO Pena has been a member of the NYPD for four years, and is the subject of one prior CCR complaint, involving two allegations. None of the allegations were substantiated. [STOPE] PO Rios has been a member of the NYPD for four years and is the subject of four prior CCR complaints involving 22 allegations. In case #201507072, a frisk allegation was substantiated the Board and Command Discipline B was recommended. The NYPD imposed a penalty of Formalized Training. In case #201608892, two frisks, a refusal to provide name/shield, and a search of property allegations were substantiated by the Board and Command Discipline A was search of property allegations. 	 (Board Review 31, 32, 3 Sgt. Gibson has been a recomplaints involving 36 substantiated by the Board Instructions. In case #20 Charges were recommendated 	Civilian and Officer CCRB Histories
 This was \$\frac{87(2)(0)}{2}\$ s, \$\frac{87(2)(0)}{2}\$ s, and \$\frac{87(2)(0)}{2}\$ s first CCRB comp (Board Review 31, 32, 33). Sgt. Gibson has been a member of the NYPD for 10 years, and is the subject of 11 prior CCF complaints involving 36 allegations. In case # 201005227, a frisk and question allegations we substantiated by the Board and Charges were recommended. The NYPD imposed the penalty Instructions. In case #201110762, a vehicle stop allegation was substantiated by the Board ar Charges were recommended. The NYPD chose not to prosecute. In case #201510005, a gun pointed and nightstick as club allegations were substantiated by the Board and Command Discipline B was recommended. The NYPD chose not to implement discipline. Sgt. Gibson I one open CCRB complaint, #201708245, which is currently being investigated by Investigate Ralph of Squad 16. \$\frac{87(2)(0)}{2}\$ PO Pena has been a member of the NYPD for four years, and is the subject of one prior CCR complaint, involving two allegations. None of the allegations were substantiated. \$\frac{87(2)(0)}{2}\$ PO Rios has been a member of the NYPD for four years and is the subject of four prior CCR complaints involving 22 allegations. In case #201507072, a frisk allegation was substantiated the Board and Command Discipline B was recommended. The NYPD imposed a penalty of Formalized Training. In case #201608892, two frisks, a refusal to provide name/shield, and a search of property allegations were substantiated by the Board and Command Discipline A were substantiated by the Board and Command Discipline A were substantiated by the Board and Command Discipline A were substantiated by the Board and Command Discipline A were substantiated by the Board and Command Discipline A were substantiated by the Board and Command Discipline A were substantiated by the Board and Command Discipline A were substantiated by the Board and Command Discipline A were substantiated by the Board and Command Discipline A were substantiat	 (Board Review 31, 32, 3 Sgt. Gibson has been a recomplaints involving 36 substantiated by the Board Instructions. In case #20 Charges were recommendated 	Civilian and Officer CCRB Histories
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recommended. The NTFD's disposition has not been provided.	complaints involving 22 the Board and Command Formalized Training. In search of property allega	2 allegations. In case #201507072, a frisk allegation was substantiated d Discipline B was recommended. The NYPD imposed a penalty of a case #201608892, two frisks, a refusal to provide name/shield, and a

- PO Dethomas has been a member of the NYPD for four years and has no prior CCRB complaints (Board Review 37).
- PO Baez has been a member of the NYPD for five years and is the subject of five prior CCRB complaints, involving 17 allegations. In case #201606760, a retaliatory arrest, discourteous word, and frisk allegations were substantiated by the Board and Command Discipline A was recommended. The NYPD chose not discipline PO Baez, as it was past statute of limitation. In

	case #201607176, a stop allegation was substantiated by the Board and Command Discipline A was recommended. The NYPD upheld the Board's recommendation. [857(2)(9)]				
	Mediati	on, Civil and Criminal Histories			
	t 22, 2017, \$ 87(2)(b) No amount w and \$ 87(2)(b)	iation, as \$87(2)(b) intended to file filed a Notice of Claim on behalf of as claimed (Board Review 41). have no criminal convictions	of § 87(2)(b) and		
Squad No.:					
Investigator:	Signature	Print Title & Name	Date		
Squad Leader:	Signature	Print Title & Name	Date		
Reviewer:	Signature	Print Title & Name	 Date		